IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

CRL.A.No. 95 of 1998()

CC.11/1996 of ENQUIRY COMMR. & SPL. JUDGE, TRIVANDRUM
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APPELLANT: ACCUSED NO.3.

VELAYUDHA MENON, S/O. RAMAN NAIR,
CHAITHANYA, T.C. NO.17/1439,
THIRUVALLA VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.B.RAMAN PILLAI
SRI.GEORGE PHILIP
SRI.R.ANIL
SRI.RAJU RADHAKRISHNAN
SRI.ANIL K.MOHAMMED
SRI.DELVIN JACOB MATHEWS

RESPONDENT: COMPLAINANT

STATE REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/07/2007, ALONG WITH CRA NO. 116 OF 1998 THE COURT ON 13/09/2007 DELIVERED THE FOLLOWING:

tss

CRL.A. NO.95/1998

ORDER ON CRL.MP. NO.470/1998 IN CRL.A. NO.95/1998

DISMISSED

13/09/2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

tss.

K.R. UDAYABHANU, J.

CRL.A.NOS. 95 & 116 OF 1998

DATED THIS THE 13TH SEPTEMBER 2007

JUDGMENT

Accused 1 and 2 in C.C.No.11/1996 of the Court of Enquiry Commissioner and Special Judge, Thiruvananthapuram are the appellants in Crl.A.No.116/1998 and Accused No.3 is the appellant in Crl.A.No.95/1998. All the three stand convicted for the offences under Sections 8 and 9 of the Prevention of Corruption Act (hereinafter referred to as 'the Act') and Section 120-B and 420 I.P.C. Accused 1 and 2 were convicted for the offence under Sections 8 and 9 of the Act and Section 120-B and 420 I.PC. A3 was found guilty of the offence under Section 10 & Section 13(2) read with Section 13(1)(d) of the Act and Sections 120-B and 420 I.P.C. Accused 1 and 2 stand sentenced to undergo rigorous imprisonment for a period of one year each for the offence under Sections 8 and 9 of the Act and to undergo rigorous imprisonment for two years each for the offence under Sections 120-B and 420 I.P.C and to pay a fine of Rs.2 lakhs each and in default to undergo rigorous imprisonment for 20

months each. Accused No.3 stands sentenced to undergo rigorous imprisonment for a period of one year for the offence under Section 10 of the Act and rigorous imprisonment for a period of two years each for the offence under Sections 13(2) read with Section 13(1)(d) of the Act and Section 120-B and 420 I.P.C. and to pay a fine of Rs.2 lakhs for the offence under Section 420 I.P.C. and in default to undergo rigorous imprisonment for 20 months. The amounts recovered from A1 and A2 were ordered to be confiscated and adjusted towards the fine imposed. The fine, if realised is to be paid to Pws.1 and 7 in equal proportion.

2. The prosecution case is that A1 to A3 conspired for unlawful gain and managed to obtain a sum of R.3,00,000/- each from Pws.1 and 7 representing that they shall obtain admission through the Chief Minister's quota for Pws.2 and 13, the sons of Pws.1 and 7 respectively for the M.B.B.S.course during August 1993 and June 1994. PW3 was then working as Additional Private Secretary to the then Chief Minister Mr. K.

Karunakaran.

3. The evidence adduced in the matter consisted of the testimony of Pws. 1 to 27, Exts.P1 to P26, C1 and Mos.1 to 31.

4. Accused No.3 is no more. He died during the pendency of the proceedings herein and his widow has applied for permission to continue the appeal vide Crl.M.A.No.10297/2006.

5. Pws.1 and 2, 7 and 13 have provided the direct evidence with respect to the transaction involved. It is the version that as they failed to get back the amounts paid after the undertaking by A1 to A3 did not materialise. PW1 lodged Ext.P1 F.I.S.on 5-9-1994. Subsequently the Director General of Police transferred the case to the Crime Branch . Thereafter the provisions under the Act were also incorporated and the Government issued special order empowering PW27 then working as Dy.S.P. in the Crime branch to proceed with the investigation.

6. The fact that A3 was then working as Additional Private Secretary to Chief Minister is proved through PW23, the

then Under Secretary in the G.A.D. A3 , the Deputy Commandant, Special Branch C.I.D. was deputed to the Personal Staff of the Chief Minister. Ext.P15 is the sanction order to prosecute A3 which has been proved through Pw2, senior grade assistant in the Home Department. The above facts were not disputed in the appeal. Pws.1 and 7 are relatives and both of them were working abroad and quite well off. It has come out in evidence that PW1 was in the United States and PW7 in Abudhabi. PW1 wanted his son who is PW2, who had passed out in the XII Std. from Al Uthuman School at Kazhakoottam and had appeared for entrance examination for M.B.B.S.and was awaiting for results. It is the case that in July 1993, A2 came to the house of PW1 and promised to arrange seat for PW2 in the Medical College, Thiruvananthapuram from the quota of the Chief Minister and explained that it can be arranged through A3, who is the Private Secretary to the Chief Minister for a sum of Rs.5 lakhs and that A3 can be contacted through A1. He assured Pws.1 and 2 that there is nothing that could not be done in

Kerala if Chief Minister Mr. Karunakaran wanted it. So acting on the promise of A2 PW1 arranged the amount and on 9-9-1993 along with his wife and PW2 went to the house of the 2nd accused and along with A2, they met A1 and Rs.3 lakhs was given to them. A1 gave a cheque for Rs.2 lakhs to PW1 as security. PW1 was told that there has to be an interview before A3 and the mark list of XII Standard and photocopy of the hall ticket of the entrance examination should also be brought. It is the evidence of Pws. 1 and 2 that on 10-9-1993, PW1 along with his wife and PW2 went to the house of A2 and along with A2 they went to the house of A1 and all of them went to the house of A3. A3 examined the mark list and remarked that the marks are good and said O.K. A3 also collected mark list and hall ticket. Later when the results were published the name of PW2 was not in the list. When contacted, A2 assured that the name would be in the supplementary list. A2 also handed over a cheque for Rs.one lakh and he mentioned that the above sum represented the commission to A1 and A2. It was also told that

Rs.2 lakhs was with A3 and the same will be returned when requested. A2 also promised that PW2 would be get a seat in the first preference in the following year. Believing the words of A2, PW1 asked A2 to retain the amounts with them. But subsequently in March 1994, PW2 got admission in B.D.S in Bangalore. A1 assured that the amount will be returned by 20-9-1994. Pws.1 and 2 have graphically described the above details in uniform.

7. PW7 has testified that he contacted PW1 when through PW1 the wife of PW7 knew that PW2 got admission for B.D.S. and she made enquiries with PW1 as to how he obtained the same. It was how the wife of PW7 got to know of the deal with A1 to A3. PW1 introduced A2 to the wife of PW7 and A2 came to the house of PW7 in May 1994 and offered to arrange a seat for M.B.B.S.for their son (PW13) outside Kerala for a sum of Rs.10,00,000/-. PW7 returned from abroad on 2-6-1994. On the next day, A2 came to his house and repeated the offer but PW7 was not inclined and informed that his son has applied for

entrance examination in Tamil Nadu, Karnataka and Kerala. On the next day, PW1 came to the house of PW7 and mentioned the details of the connection of A1and A2 with A3 and that the seat for his son (PW2) could not be arranged as the payment was made late. Later A2 came to the house of PW7 and offered a seat in Kerala itself for a sum of R.5.5 lakhs. Thereafter, the 2nd accused along with first accused went to the house of PW7 and A1 was introduced as Personal Assistant of A3. PW7 was told that there were about 5 to 6 seats in the Chief Minister's quota and right now only one is in balance and the same can be arranged for R.5.5 lakhs. PW7 insisted for hearing from A3 as to the details. A1 arranged the meeting and an interview on 8-6-1994 at 9 a.m. On the appointed time PW7, PW13, his son and A1 went to the house of A3. A3 enquired PW13 as to how he had performed in the pre-degree examination and whether he has got the hall ticket of the entrance examination and recollected that in the last year he had arranged a seat for another student who unfortunately failed in the pre-degree

examination and that the same should not be repeated in the case of PW13. As to the payment etc. he directed PW7 to settle with A1. On 9-6-1994 Pw7 withdrew Rs.3 lakhs from his fixed deposit in British Bank of Middle East at Vellayambalam. Thereafter, PW7 along with Pws.1 and 13 went to the house of A1 and in the presence of A2,the amounts were handed over. A1 issued cheque for the above amount. In the evening PW7 along with PW1, and A1 went to the house of A3 and amount was taken in a bag (vegetable bag). Pws.1 and 7 were made to sit in the car and A1 went inside the house and returned with the empty bag. Subsequently on 15-6-1994 when the hall ticket for entrance examination was obtained a copy was given to A1 who told that the same will be given to A3. Subsequently Pw7 went to the house of A3 along with copy of the hall ticket. But A3 told that he has already received the same.

8. Subsequently, A1 came to the house of PW7 and invited PW7 and family to his proposed marriage and also told that Chief Minister also will be present. A1 sought for a loan of Rs.25,000/-

for the marriage purpose and it was told that the amount can be adjusted in the balance amount to be paid towards the M.B.B.S.seat. On the following day PW7 paid the amount and A1 issued the cheque for the same. Later when results were published on 5-8-1994, the name of PW13 was not in the list. Then both PW1 and PW7 sought for return of the amounts. They met A3 who directed them to settle the matter with A1. It was promised that the amount will be returned within two or three days which did not materialise. Subsequently when they went to the house of A3 and informed him that a complaint will be filed before the Chief Minister. But A3 replied that nothing could be done and the matter can be settled with A1. On 1-9-1994, Pws.7 and 1 went to the office of A3 and then A3 exhibited total ignorance of the incidents and rather threatened them that they should not come to the office in future. That was how the complaint happened to be filed before the Circle Inspector of Police, Peroorkada. Subsequently they instituted civil case as well, i.e. Exts.D4 and D5 after issuing notices, i.e. Exts.D1 to D3.

As already noted Pws.1, 7, 12 and 13, the parents and the sons who subsequently got admission for B.D.S.at Bangalore have testified uniformly.

9. It is the defence of A1 and A2 that they used to borrow amounts from several persons at a lower interest rate and lend the same on higher interest and that it was how the amounts were taken from Pw2 and PW7. According to A2, PW2, the son was known to him earlier and without the knowledge of PW1, PW2, the son used to lend money. According to A3, when Mr. Jayaram Padickal was the D.G.P., the next senior most officer, Madhusoodhanan had some misunderstanding with him and when subsequently Madhusoodhanan became the D.G.P., he has foisted the present case to wreck his grouse against A3. According to him, he is totally innocent in the incident.

10. PW11, the Manager of Muthoot Bankers, Kesavadasapuram has testified that PW1 and his wife had a fixed deposit for Rs.30,000/- in the above institution vide Ext.P8 F.D. receipt. The amounts were invested to be repaid with 14%

interest. PW11 has stated that the above F.D. was encashed on 8-9-1993. Ext.P10 is the ledger extract. The above documents were taken into custody as per Ext.P8 mahazar. Pw10, the Partner of Malayil Bankers, Medical College Branch has testified that Pw1 and his wife had two F.D.Rs.for Rs.25,000/-each with Malayil Bank which are Exts.P5 and P6 which have taken into custody as per Ext.P4 mahazar and the amounts were deposited on 18% interest. The same were prematurely encashed in September 1993. PW15, the Manager of Federal Bank, Pongumoodu Branch has testified that PW1 had N.R.I. S.B. account in the name of his wife and from the above on 8-9-1993 Rs.2 lakhs was withdrawn. Ext.P11 and P12 are the statements of accounts of Mrs.Annamma Thomas, wife of PW1. Hence, altogether a sum of Rs.2,80,000/- was withdrawn from the above three institutions on 8-9-1993. It was on 9-9-1993 that the amounts were plaid to the accused.

11. PW27, the investigating officer has proved Ext.P2 computer slip from the British Bank of Middle East,

Vellayambalam as per which PW7 has withdrawn a sum of Rs. 3 lakhs on 9-6-1994 that day on which the amount was paid to the accused.

12. PW26, the Circle Inspector, Peroorkada as per Ext.P19 (a) confession statement of A1 on 6-9-1994 recovered two bundles of 500 notes each containing 98 in number, altogether a sum of Rs.98,000/- from the house of A1. He also took into custody of Exts.P13 and P14 assignment deeds of 1993 in favour of A1. The currency notes in the bundle were new and were of continuous serial numbers. Two notes each were seen taken out from each bundle. PW19, who is the assignor in Ext.P14 assignment deed has testified that six cents and 3.5 cents of properties were assigned to A1 at the rate of Rs.1500/- per cent. Ext.P14 was executed by his aunt and the children and PW19 is the witness in the sale. The sale consideration would work out to Rs.14,250/-. The court below has noted that usually the correct amount would not be mentioned in the sale deed, obviously to save stamp duty. Ext.P13 is the another

assignment deed executed by PW17 as the power of attorney holder of his brother was not taken into consideration by the court below as it is dated prior to the alleged transaction in the present case.

13. PW26 as per Ext.P2(a) confession statement of A2 on 6-9-1994 also recovered Rs.30,000/- from the house of A2, i.e.MO.1 series, MO.2 series and MO.3 series. He also recovered Mos.4, 7, 10 and 11,signed blank cheques and Mos.5,6,8, 9, 12 & 13 signed blank stamp papers from the house of A2.

14. Pw9 is a person who has borrowed Rs.15,000/- from the 2nd accused for a lesser rate of interest so as to settle his debt in connection with the marriage of his sister. Ext.P9 is the blank cheque leaf signed by him and Exts.P8 and P9 are two signed stamp papers. The above is the evidence of PW9. PW8, an Architect and neighbour of the 2nd accused has testified that he borrowed a sum of Rs.15,000/- in September 1993 and another Rs.50,000/- and issued MO.10 and MO.11 blank signed cheque leaves and Mos. 12 and 13 signed stamp papers. He has

repaid Rs.7,000/- and is paying interest at the rate of Rs.10% . PW12 who is said to be an Electrician has borrowed Rs.30,000/- to furnish his office for which he has given MO.4 cheque and Mos.5 and 6 signed stamp papers. The above evidence would indicate as noted by the court below, that a sum of Rs.1,10,000/-, altogether was advanced to the above persons by the 2nd accused subsequent to the receipt of the amounts from Pws.1 and 7. It is the version of the above witnesses that the interest rate was low. The court below has rightly observed that PW1 has withdrawn the amounts which were deposited at 14% interest and 18% interest and given to the accused and hence the claim of A1 and A2 that the amounts used to be given to them on interest by the complainants and that they used to conduct money lending business cannot be believed at all. Further even according to A1 and A2, they do not have any ostensible source of income. I find that the evidence of Pws.14 and 16 as to the activities of the 2nd accused in receiving the amounts making believe that he can get things done including

the transfer of Associate Professor of Bio-Chemistry at Medical College, Thiruvananthapuram making use of his clout with the office of the Chief Minister, I find is somewhat irrelevant as what is material is only the conduct of the accused with respect to the complainants.

15. A1 and A3 have got close connection is sought to be proved from the photographs and negatives obtained on the search of the house of A1 by PW25. Mos.16, 17, 18, the photographs and MO.19 negative were duly proved by PW24, the photographer and supported by the evidence of Pw4, a neighbour, which would show the presence of A3 at the marriage of A1. PW21, the phtographer and PW18, the viedeographer have testified that the newly married A1 and his wife had a photo session with the Chief Minister at the residence of the Chief Minister. It is further pointed out that Pws.18 and 21 are related to A1.

16. The contention of the defence based on Exts.D1 to D5, lawyer notice and suits filed by Pws.1 and 7 respectively, i.e.

Exts.D4 and D5, were stressed by the defence as the alleged transactions in the above proceedings are non-repayment of the amounts borrowed. It is the version of Pws.1 and 7 that DW1, the Advocate, got them signed in certain blank papers and that the allegations in the lawyer notice and the pleadings in the suit do not reflect the real facts. DW1, the lawyer has stated that the notices were sent on instructions but he claimed privilege and did not reveal the details of the instructions. As rightly pointed out by the court below, Exts.P1 and P27 were not confronted with Exts.D1 to D5. Further Exts.D1 to D3 are dated 14-9-1994, Ext.D4 is dated 1-10-1994 and Ext.D5 is dated 30-10-1994. On 29-9-1994, the statements of Pws.1 and 7 were recorded by the Additional Judicial First Class Magistrate under Section 164 Cr.P.C. The F.I.R. was registered on 5-9-1994. Exts.D1 to D5 is dated about more than one month of the above dates. Hence, the above would indicate that the allegations in the prosecution case is the correct version and not the facts pleaded in Exts.D1 to D5. Exts.P23 to P26 are the attested

copies of the cheques issued by A1 and A2 which were taken from the civil proceedings and proved by PW27, the investigating officer. MO.14 is the pass book of A2 of the Central Bank of India recovered by Pw25. Ext.P25 is the cheque book issued by A2 drawn on Central Bank of India.

17. The fact that the amounts were withdrawn by PW1 and PW7 on the day prior and on the very date of payment of the amounts to A1 to A3 is a very strong factor that goes a long way to establish the case set up by the prosecution.

In the light of the above evidence adduced and in view of the fact that the evidence of prosecution witnesses stands unimpeached, I find that the conviction entered into by the Special Judge is only to be upheld. As noted above, A3 is no more and his widow has been permitted to proceed with the appeal. I find that, in the circumstances, it is not necessary to burden the widow with the fine imposed. Hence, the sentence imposed on A3 is set aside. Counsel for Accused 1 and 2 has pleaded for leniency pointing out that for more than 10 years,

they were facing the criminal proceedings and living under the shadow of impending imprisonment. The proceedings started from September 1994. In the circumstances, I find that the sentence of imprisonment is to be avoided. A1 and A2 are sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs.2,00,000/- each for the offence under Section 420 I.P.C. and in default to undergo simple imprisonment for 12 months each. The recovered amounts from the houses of A1 and A2 would be adjusted towards the fine amounts as ordered by the court below. No separate sentence is awarded for the rest of the offences. The order of the court below that the fine amount, if realised ,will be paid to Pws.1 and 7 equally is sustained. Accused 1 and 2 is granted six months time to remit the fine amount. They shall appear before the Special Judge, Thiruvananthapuram on 14-3-2008 to receive sentence. The Crl.appeals are disposed of accordingly.

ks. **K.R.UDAYABHANU, JUDGE**

K.R.UDAYABHANU, J

CRL.A. NOS.95 & 116 OF 1998

JUDGMENT

13-9-2007